## IN THE UNITED STATES DISTRICT COURT

FILED U.S. DISTRICT COURT

## FOR THE SOUTHERN DISTRICT OF GEORGIA

## **AUGUSTA DIVISION**

2010 JUN 28 P 3: 43

ROBERT THOMAS ONDILLA,	)	CLERI SM
Patitionar	)	Det. in bil
Petitioner,	)	•
<b>v.</b>	)	CV 109-112
	)	(Formerly CR 104-085)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

## ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed (doc. no. 7). Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Petitioner's motion for an evidentiary hearing (doc. no. 2) and § 2255 motion are **DENIED**.

Further, a federal prisoner must obtain a certificate of appealability ("COA") before appealing the denial of his motion to vacate. This Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) to the Rules Governing Section 2255 Proceedings. This Court should grant a COA only if the prisoner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Report and Recommendation, and in consideration of the

<sup>&</sup>lt;sup>1</sup>Respondent also filed a response to Petitioner's objections. (Doc. no. 8.)

standards enunciated in <u>Slack v. Daniel</u>, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, a COA is **DENIED** in this case.<sup>2</sup> Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Accordingly, Petitioner is not entitled to appeal *in forma pauperis*. <u>See</u> 28 U.S.C. § 1915(a)(3).

Upon the foregoing, the Clerk is directed to **CLOSE** this civil action and **ENTER**FINAL JUDGMENT in favor of the United States of America.

SO ORDERED this 28 day of (

\_\_, 2010, at Augusta, Georgia.

UNITED STATES DISTRICT JUDGE

<sup>&</sup>lt;sup>2</sup> "If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Rule 11(a) to the Rules Governing Section 2255 Proceedings.